INDEX

	Page
Opinion below	1
Jurisdiction	1 - 2
Question presented for review	2
Constitutional provisions, statutes and rules involved	2
Statement of Case	2 thru 12
Reasons for granting writ	12 thru 25
Conclusion	25 - 26
Appendix A - Opinions and judgments below	A1 - A13
Appendix B - Constitutional provisions, statutes and rules involved	B1 - B7

CITATIONS

Cases:	Page
In re Aram K. Berberian, 213 A 411 (Rhode Island)	14
Bloom v. Illinois, 391 US 194	22
Connally v. General Construction Co., 269 US 385, 391	23
Ex parte Dozier, 262 Ala. 197, 77 So2d 903	21
Duncan v. Louisiana, 391 US 145	22
Florida Bar v. Rogers, 192 So2d 757, (Fla. 1966)	14
In re Garland, 71 US 333 (1866)	14
In re Greer, 52 Ariz. 385, 81 P2d 96	14
In the Matter of John Ike Griffith, 219 So2d 357 (Ala. 1969)	23
Ex parte Griffith, 278 Ala., at 348	13
In re Hosea, 201 NE2d 560 (Ind. 1960)	14
Ex parte Huie, 278 Ala. 330, 178 So2d 156 cert. den., 382 US 988	4, 21
In re Petition for Disbarment of Lee and Prisock, 141 So2d 715 (Miss. 1952)	14
Leland v. Oregon, 343 US 790 (1952)	24
State ex rel McCormick v. Winton, 11 Ore. 456	13
Ex parte Messer, 228 Ala. 16, 152 So 244	21
In re Murchison, 349 US 133 (1955)	16
Nicklaus v. Simmons, 196 FSupp 691	14
Pointer v. Texas, 380 US 400	22
Ruiz v. Delgado, 359 F2d 718 (CA1, 1966)	16
In re Schlesinger, 404 Pa 584, 172 A2d 835 (1963)	16, 22
Shapiro v. City of Birmingham, 30 AlaApp 1, 10 So2d 38	21
Sullivan v. Alabama State Bar, et al., 394 US 812	24
Willmer v. Committee on Character and Fitness, 373 US 96	22
Wilson v. Alabama, 243 Ala. 1, 8 So2d 422	21
Whitehead v. Whitehead, 3rd Cir., Hawaii, D-5505	17
Zwickler v. Koota, 389 US 241	23

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Constitutional provisions and statutes:

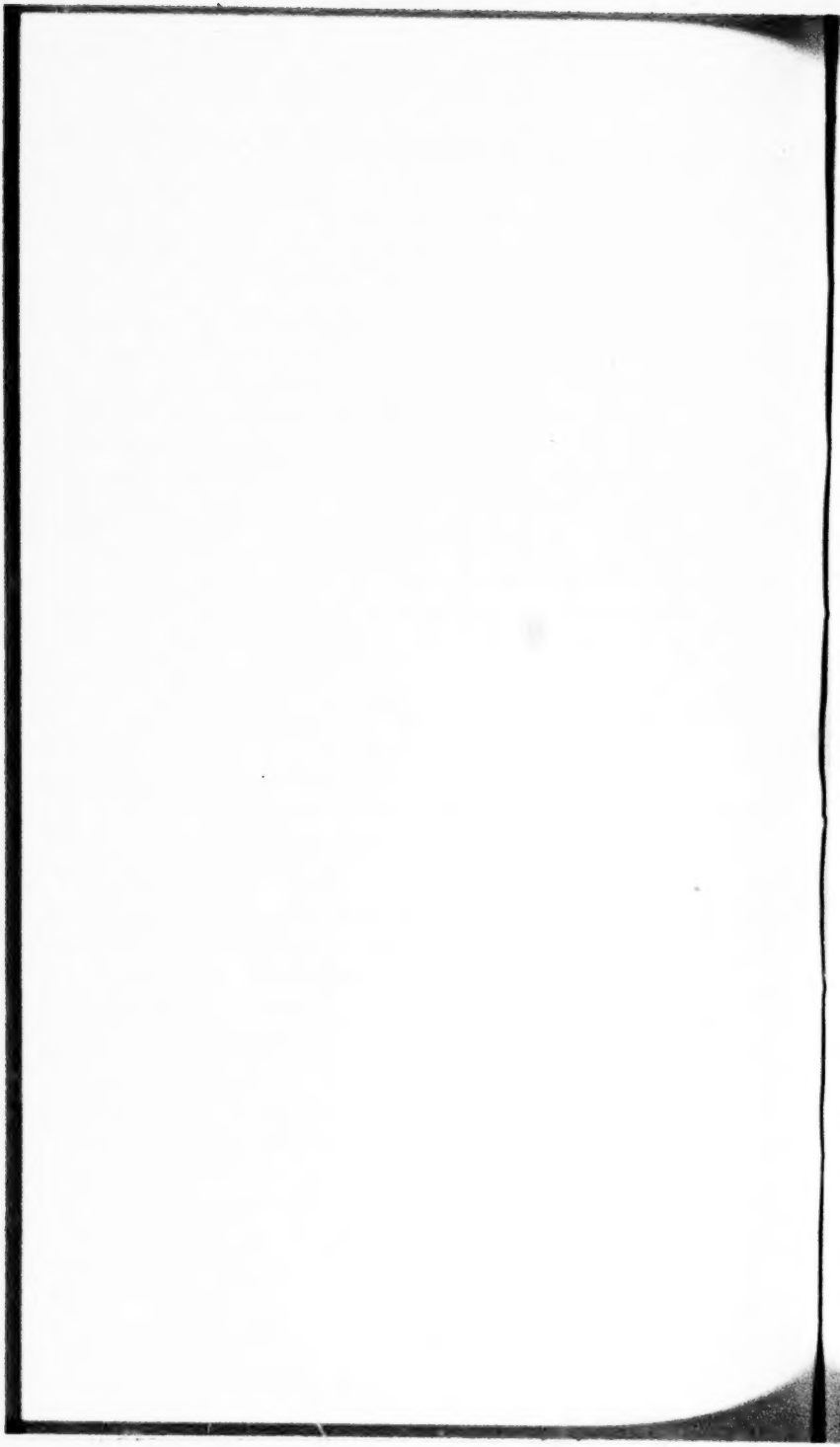
Alabama Code, 1940, Title 34, Section 29 17
Alabama Code, 1940, Title 46, Section 25 . . . . . 15, 21
Alabama Code, 1940, Title 46, Sections 94 and 284 23
Arizona Code Annotated, 1939, Sec. 32-201, et seq 14
Arkansas Code Annotated, Sec. 205-401, et seq 14
Connecticut Code, Title 5, Sec. 51-90 14
District of Columbia Code, Title 11, Sec 11-201, et seq 14
Hawaii Rev. Stat., Sec. 580-1 17
Henry VIII, 4 Henry 4, C18 13
Mississippi Code, 1942,Sec. 8711, et seq 14
Nebraska Rev. Stat., 1943, Sec. 7-114, et seq 14
U. S. Code, 28-1257(3) 2
United States Constitution, VIth Amendment 7, 8, 21
United States Constitution, XIVth Amendment 2, 7, 8, 9, 10
12, 13, 16, 20, 21

Rules:

Alabama Bar, Board of Commissioners, Rule 25, Section A . . . 8
17, 19, 20, 25
Delaware, Supreme Court, Rule 32 14
Florida Bar, Integration Rule, Article XI, Rules of Discipline,
as amended, December 13, 1961. 14
Indiana, Rules of Supreme and Appellate Courts,
Burns' Indiana Statutes Annotated, Vol. 2,
Part 1 (1966 Supp.) . . . 14
Rhode Island, Rules of Supreme Court, Rule 9 14

Other publications:

Levy, Origins of the Fifth Amendment (1968) 25



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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO.

J. ROBERT HUIE,
Petitioner

vs.

BOARD OF COMMISSIONERS OF THE
ALABAMA STATE BAR,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your peitioner, J. ROBERT HUIE, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the judgment of the Supreme Court of Alabama rendered on the 8th of January, 1970, which affirmed the disbarment of petitioner by the Board of Commissioners of the Alabama State Bar on the 3rd of March, 1967.

A timely application for rehearing in the Supreme Court of Alabama was denied, without opinion, on the 5th of February, 1970.

OPINION BELOW

The opinion of the Supreme Court of Alabama has been reported at 230 So2d 514, under the title: *In the Matter of J. Robert Huie.*

A copy of this opinion is attached hereto in Appendix A, *infra*, pp. A1 thru A 11.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on the 8th of January, 1970, and is annexed hereto in

Appendix A, *infra*, p. A 12.

A timely petition for rehearing was denied on the 5th of February, 1970, and the judgment of the Supreme Court of Alabama thereon is in Appendix A, *infra*, p. 13.

The statutory provision believed to confer jurisdiction upon this Court to review the judgment in question is 28 U.S. Code, Section 1257(3).

QUESTION PRESENTED FOR REVIEW

Whether or not the totality of procedures prescribed and followed in Alabama from the inception to the termination of a disciplinary proceeding against an attorney, and wherein the Board of Commissioners of the Alabama State Bar formulated a rule of ethical conduct, and then proceeded to act, directly or indirectly, as accuser, prosecutor, judge and jury, for a violation of that rule, are consistent with that due process guaranteed by the Fourteenth Amendment, United States Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The constitutional provisions, statutes, and rules involved are set forth in Appendix B, pp. B1 *et seq, infra.*

STATEMENT OF THE CASE

This disciplinary proceeding against petitioner J. ROBERT HUIE, as a licensed attorney of Alabama, has been in progress formally for almost six years.

On or about the 20th of May, 1964, the Grievance Committee of the Alabama State Bar filed four charges (R. pp. 7 thru 20) against J. ROBERT HUIE alleging certain enumerated violations of Rules 25 and 36, Section A, as last amended, Rules Governing the Conduct of All Persons Admitted to the Practice of Law in the State of Alabama (Appendix B, *infra*, pp. B 6 thru B 7).

Succinctly stated, Rule 25, Section A, as last amended, proscribes certain conduct by attorneys in the procurement of divorces in the courts of Alabama, with particular stress upon the existence, in fact, of the non-residency of both parties to a divorce action. Rule 36, Section A, as last amended, is that

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vague and general prohibition of "any conduct unbecoming an attorney at law."

Thereafter, the Grievance Committee added to the original complaint Charges Five and Six (R. pp. 21 thru 25), once more alleging violations of Rules 25 and 36, Section A, as last amended.

In a pleading filed the 14th of July, 1964, titled "Motion to Quash", J. ROBERT HUIE immediately attacked on federal constitutional grounds several aspects of the complaint or information and the procedures to be followed (R. pp. 30 thru 38):

> "5. For that Section A, Rule 36 of the Rules Governing the Conduct of Attorneys in Alabama, which condemns 'any conduct unbecoming an attorney at law' and makes an attorney subject to discipline therefor, fails to set up a standard of conduct reasonably ascertainable and sufficiently definite to afford a constitutional guide or standard for an attorney." (R. p. 31)
>
> * * *
>
> "18. For that Section B, Rule 18, making the 'opinion' of the Board the sole measure of the relevance, materiality or competency of testimony sets up a standard for testimony so indefinite, unascertainable and subject to change that the accused attorney is denied a trial according him due process and equal protection as guaranteed to him by the Constitutions of Alabama and of the United States." (R. pp. 33-34) (Rule 18 appears in Appendix B, *infra* p. 7).

Furthermore, in this "Motion to Quash" the following appears:

> "Accused respectfully requests a jury trial in Jefferson County, Birmingham Division, of the issues of fact presented in this case." (R. p. 38)

Thereafter, the Grievance Committee attempted to take the testimony of J. ROBERT HUIE, and upon his refusal to produce documents or to take the witness stand and testify J. ROBERT HUIE was held in continuing contempt of court. (R. pp. 54, *et seq.)*

This citation for continuing contempt was tested in the Supreme Court of Alabama, Ex parte *Huie*, 278 Ala 330, 178 So2d 156, *cert. den., Griffith, et al., v. Board of Commissioners of Alabama Bar*, 382 US 988. Upon being denied relief from the contempt ruling, J. ROBERT HUIE on the 28th of April, 1966, took the witness stand (R. pp. 64, *et seq.*, p. 79). However, on advice of counsel, J. ROBERT HUIE, refused to answer any question concerning the charges brought against him (R. pp. 81, *et seq.*).

On the 29th of April, 1966, the Grievance Committee filed additional charges SEVEN through TWELVE (R. pp. 431 thru 435). Charges SEVEN, EIGHT, and NINE, are of utmost importance since these are the three charges upon which the affirmance of the disbarment of petitioner J. ROBERT HUIE is based by the Supreme Court of Alabama:

CHARGE SEVEN
(Violation of Rule 25, Section A)

> "On, to-wit, January 27, 1965, the said attorney did submit to the Circuit Court, Tenth Judicial Circuit of Alabama, a divorce case, namely, George E. Anderson vs. Loretta A. Anderson, in Equity, Case No. 137-515, wherein the Bill of Complaint and deposition of complainant represented to the Court that the complainant was a bona fide resident of the State of Alabama, when, in truth and in fact, the said attorney knew, or had reasonable cause to believe, that neither the complainant nor the respondent was a bona fide resident of the State of Alabama.
>
> "The Grievance Committee charge that in doing the above described acts, the said attorney was guilty of violating or failing to comply with Rule 25 of Section A of the Rules Governing the Conduct of All Persons Admitted to the Practice of Law in the State of Alabama, the same having been heretofore attached to the pleadings in this cause."

Charges EIGHT and NINE allege the same facts as in violation of Rules 16 and 36, Section A (Appendix B, *infra*, p. B7).

On the 11th of March, 1966, petitioner J. ROBERT HUIE had filed an amendment to his motion to quash complaint, including the following ground, which was reassigned to the foregoing counts on the 11th of June, 1966:

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"35. For that Rule 25, Section A, as last amended, Board of Commissioners of the Alabama State Bar, is *contra* to the interpreted statutory law of the State of Alabama, particularly Title 34, Section 27 and 29, Code of Alabama, 1940, and, as a result, said Rule violates the due process clause of Article I, Section 6, Constitution of Alabama, 1901, and the due process and equal protection clauses of Amendment XIV, Constitution of the United States." (R. p. 436)

Furthermore, additional grounds in support of the motion for dismissal were added on the 19th of September, 1966:

"37. For that Section A, Rule 25, as amended, is null, void and illegal inasmuch as the BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR which promulgated such rule (to-wit: the 24th day of October, 1961) was illegally and unconstitutionally composed in violation of the due process clause of Article I, Section 6, Constitution of Alabama, 1901, and the due process and equal protection clause of Amendment XIV, Constitution of the United States in that there is an unconstitutional disparity in the number of members of the Alabama State Bar in the judicial circuits which elect the BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR, a legislative, judicial and executive arm of the State of Alabama, and functioning under its sole authority.

* * *

"42. For that Section A, Rule 25, as amended, is null, void and illegal inasmuch as marriage is a civil contract only, as any other contract, and to require that a party to a divorce, or both parties, be a bona fide resident of the State of Alabama is a violation of the due process clauses of the state and federal constitutions and the equal protection clause of Amendment XIV, Constitution of the United States.

* * *

"44. For that Section A, Rule 25, as amended, is null, void and illegal in that the Supreme Court of Alabama has *held* on recent occasion in *Lutsky v. Lutsky*, 183 So2d

782 (March 3, 1966) that even though neither party to a divorce was domiciled in the State of Alabama it would not disturb the decree, thus creating such uncertainty in the law of divorce in the State of Alabama as to cause said rule to violate the rights of defendant guaranteed by the due process clauses of the state and federal constitutions and the equal protection clause of Amendment XIV, Constitution of the United States.

* * *

"46. For that Section A, Rule 25, as amended, is null, illegal and void inasmuch as marriage is a civil contract only, as any other contract, and to require that the parties to a divorce, or one of the parties, be a bona fide resident of the State of Alabama, when both parties are before the court, which court has jurisdiction of the subject matter is a violation of Amendment I, Constitution of the United States, as the same is made applicable to the State of Alabama by operation of Amendment XIV, Constitution of the United States." (R. pp. 466 thru 469)

Proceedings by way of deposition were commenced at the Jefferson County, Alabama, Court House, before a Commissioner, on the 24th of October, 1966 (R. pp. 174, *et seq.*).

Immediately, petitioner J. ROBERT HUIE interposed an objection to the commissioner based on the ground that such commissioner was a licensed, practicing attorney and a licensed member of the Alabama State Bar, concluding with the following:

"A. To allow the said TIMOTHY M. CONWAY, JR., a licensed member of the Alabama State Bar, and thereby an interested person, to take testimony would violate the rights of the said J. ROBERT HUIE to due process under Article I, Section 6, Constitution of Alabama, 1901, and Amendment XIV, Constitution of the United States." (R. p. 478)

The commissioner declined to recuse himself (R. p. 179).

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Testimony taken concerning the aforesaid Charges SEVEN, EIGHT and NINE included that of Judge Claude Hughes, one of the Circuit Judges, Tenth Judicial Circuit of Alabama (R. pp. 239, *et seq.)*, and O. H. Florence, register in chancery, Tenth Judicial Circuit of Alabama (R. pp. 245, *et seq.)* and included certain exhibits (R. pp. 299 thru 303).

Meanwhile, depositions of Loretta Anderson and Edward J. Dolan had been taken on the 30th of June, 1966, in New Brunswick, New Jersey, and petitioner J. ROBERT HUIE was forced at considerable expense to employ counsel to represent him there (R. pp. 317 *et seq.)*

J. ROBERT HUIE protected his constitutional rights in and about the use of depositions on two occasions, the first being a Motion to Suppress Depositions dated the 15th of September, 1966 (R. 465):

> "J. ROBERT HUIE, defendant, moves the BOARD OF COMMISSIONERS to suppress the depositions, separately and severally, of MRS. LORETTA ANDERSON and EDWARD J. DOLAN, heretofore filed in the above cause, on the following grounds, separately and severally:
>
> • • •
>
> "3. For that this proceeding is quasi-criminal and highly judicial and to permit the use of a deposition without the consent of the defendant violates his right of confrontation guaranteed by Amendment VI, Constitution of the United States, as the same is made applicable to the State of Alabama by the operation of Amendment XIV, Constitution of the United States."

Another motion to suppress these two depositions was filed on the 30th of January, 1967, and contained the following reservation of federal constitutional rights:

> "3. For that this proceeding, which is scheduled at the present time to be held on Thursday, February 2, 1967, is quasi-criminal, highly judicial, and a severe penalty is possible, and to permit the use of depositions without the consent of the defendant to enable the prosecuting

Grievance Committee to prove its charges violates his right of confrontation guaranteed by Article I, Section 6, Constitution of Alabama, 1901, and Amendment VI, Constitution of the United States, as the same is made applicable to the State of Alabama by the operation of Amendment XIV, Constitution of the United States." (R. p. 479)

This later motion also sought to suppress, on the same federal constitutional grounds, the depositions of each and every witness appearing at any time before the commissioner, Timothy M. Conway, Jr.

J. ROBERT HUIE on the 30th of January, 1967, further filed a Motion for Each Individual Commissioner to Recuse Himself (R. pp. 481-482). The gravamen of this motion in opposition to action by the Board of Commissioners of the Alabama State Bar, succinctly stated, was that each and every member of the Board of Commissioners had been furnished with a complete record of the testimony and evidence adduced by deposition, prior to any ruling on objections, and thereby effectively denying to J. ROBERT HUIE the benefit of a fair and impartial tribunal and due process of law.

The record reveals that Rule 25, Section A, was amended on the 20th of July, 1961, to its present reading. The guilt or innocence of J. ROBERT HUIE on a charge or charges of violations involving, among other, Rule 25, was determined by a meeting of the Board of Commissioners of the Alabama State Bar on the 3rd of March, 1967 (R. pp. 484, *et seq.)* Messrs. Walker, Blackburn, McQueen, Brantley, Hill, McCord, Carnes, and McDonnell were present on the 20th of July, 1961, and also on the 3rd of March, 1967 (R. p. 484). Exception on Fourteenth Amendment grounds to such a procedure was preserved by filing Objections to Certain Members of Board of Commissioners of the Alabama State Bar (R. p. 483).

The Board of Commissioners of the Alabama State Bar is the governing body of the integrated Alabama State Bar. Title 46, Section 21, *et seq.*, Code of Alabama, 1940, as amended. By Title 46, Section 25, Code of Alabama, 1940 (Appendix B, pp. 4 thru 6), the Board is given broad powers to formulate rules governing the conduct of attorneys in Alabama, such rules

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being subject to approval by the Supreme Court of Alabama; it investigates complaints made against attorneys; it appoints a committee (Grievance Committee) to take evidence against the charged attorney, which evidence is transmitted to the Board; the Board then sits as a judge and acts as a jury in the disciplinary matter; and the case is prosecuted by the aforesaid Grievance Committee and the general counsel of the Alabama State Bar, who is appointed by the Board of Commissioners (See, *e.g.*, R. pp. 484, *et seq.)*

J. ROBERT HUIE consistently interposed objections to the procedures utilized by the Board of Commissioners, as is illustrated in the deposition taken before Timothy M. Conway, as commissioner to take testimony, on the 24th of October, 1966 (R. pp. 174, *et seq.)*, *viz:*

> "MR. BLANTON: I'm going to make an objection at this time, that although it is stated that the Board of Commissioners would consider only relevant testimony, nethertheless to admit into evidence any testimony which the respondent considers illegal would, of necessity, reflect in the opinions of the Board of Commissioners in violation of the respondent's rights under Article I, Section 6, Constitution of Alabama of 1901, and the due process and equal protection clauses of Amendment 14 of the Constitution of the United States. In other words, what I'm saying is, to make it clear, that to put everything into the record, even though the Board of Bar Commissioners say that they will not consider it, nethertheless that they, of necessity, would consider it in violation of the rights of the respondent." (R. p. 189)

The Board of Commissioners on the 3rd of March, 1967, found J. ROBERT HUIE guilty of all charges-ONE through TWELVE (R. pp. 486 thru 492), and the punishment assessed was disbarment as to each charge separately and severally (R. p. 492). It must be here noted, especially, that the Supreme Court of Alabama affirmed the finding of guilty only as to Charges SEVEN, EIGHT, and NINE– the Anderson divorce matter and then approved the punishment of disbarment as to this one divorce (R. p. 672).

The first procedural step taken in the Supreme Court of

Alabama after the judgment of disbarment by the Board of Commissioners was a Petition for Stay filed on the 3rd of March, 1967 (R. p. 640). Then, a Petition for Writ of Certiorari to Board of Commissioners of Alabama State Bar was filed on the 7th of March, 1967 (R. pp. 643 thru 646). The Petition for Stay was denied, upon condition, on the 13th day of March, 1967 (R. p. 647). A Petition for Reconsideration was filed on the 14th of March, 1967 (R. pp. 641-642).

One of the contentions advanced in this latter petition was:

> "2. The procedure in disbarment cases in Alabama is so vague, uncertain and indefinite as to deny to your petitioner that due process guaranteed by the state and federal constitutions, and further violates the equal protection clause of Amendment XIV, U.S. Constitution, in that the order of March 13, 1967, affirmatively shows this Court has heretofore in these matters granted stays without condition."

This petition for reconsideration was stricken on the 15th of March, 1967, with two justices dissenting (R. p. 641).

The petition for certiorari was granted on the 27th of March, 1967, returnable within 30 days (R. p. 643). This petition specifically cited as errors of the Board of Commissioners the following:

> "1. The legal evidence adduced is insufficient to support the judgment of disbarment.
>
> "2. The Board of Commissioners erred in overruling OBJECTION TO JURISDICTION OF BOARD OF COMMISSIONERS OF ALABAMA STATE BAR.
>
> "3. The Board of Commissioners erred in overruling OBJECTIONS TO CERTAIN MEMBERS OF BOARD OF COMMISSIONERS OF ALABAMA STATE BAR.
>
> "4. The Board of Commissioners erred in overruling MOTION FOR EACH INDIVIDUAL COMMISSIONER TO RECUSE HIMSELF IN THIS PROCEEDING.

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"5. The Board of Commissioners erred in overruling MOTION TO SUPPRESS DEPOSITIONS, dated September 15, 1966.

"6. The Board of Commissioners erred in overruling MOTION TO SUPPRESS DEPOSITIONS, dated January 27, 1967.

"7. The Board of Commissioners erred in overruling OBJECTION TO TIMOTHY M. CONWAY, JR., AS COMMISSIONER TO TAKE TESTIMONY.

"8. The Board of Commissioners erred in overruling MOTION TO DISMISS COMPLAINT, AS AMENDED, which said motion contains 52 grounds.

"9. The Board of Commissioners erred in entering judgment of disbarment.

"10. The Board of Commissioners erred in entering judgment of disbarment in that argument of Grievance Committee was prejudicial." (R. pp. 654-655)

This cause was argued orally before the Supreme Court of Alabama, *en banc*, on the 31st of October, 1967 , and submitted (R.p.cover). Thereafter, on the 8th of January, 1970, the decision affirming the judgment of disbarment as to Charges SEVEN, EIGHT, and NINE was delivered (See Appendix A, pp. 1 thru 11). Judgment was entered on the same day (See Appendix A, p. 12).

A timely petition for rehearing was filed on the 20th of January, 1970, and denied, without opinion, on the 5th of February, 1970 (See Appendix A, pp. 13).

In this petition for rehearing the specific ground invited to the attention of the Supreme Court of Alabama was that the judgment of the 8th of January, 1970:

"***endorsed and affirmed a procedure or procedures which considered in the totality of such procedure or

procedures violate the due process clause of the Fourteenth Amendment, United States Constitution, and the entry of said judgment, accordingly, was as to this petitioner a denial of that due process guaranteed by the Fourteenth Amendment, United States Constitution." (R. p. 674).

REASONS FOR GRANTING THE WRIT

INTRODUCTION

Mr. Justice Tom Clark, formerly an active member of this Court, has been most outspoken recently in pronouncing his views concerning a seeming lack of vigor in Bar Associations in keeping their houses in order by tolerating attorney miscreants to remain at the Bar to further perpetrate their misdeeds, primarily in handling monies of clients, upon an unsuspecting public.

There can be no legitimate quarrel with his position, and none should be inferred from the present petition. Furthermore, no absconding with client's money is involved.

What is of concern is that method employed by Bar Associations, specifically here the Alabama State Bar, in the prosecution of alleged violations of statutes or rules of ethical conduct.

The dangers of combining in one body of men each and every facet of definition, administration, investigation, prosecution, and judgment were recognized by President Washington in his Farewell Address:

> "The spirit of encroachment tends to consolidate the powers of all the departments in one and thus to create, whatever the form of government, a real despotism."

This concentration of power in the Alabama State Bar represents a substitution of the shifting frontiers of personal command for the definite boundaries of general, impersonal law, and, as such, was the underlying basis for objection to the proceedings in Alabama as is clearly demonstrated by the opening paragraph of oral argument to the Supreme Court of Alabama on the 31st of October, 1967:

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"This Court today commences its formal consideration of a proceeding predicated on a Rule formulated by the Board of Commissioners of the Alabama State Bar, a private incorporated association, Ex parte *Griffith*, 278 Ala, at p. 348; prosecuted by the Grievance Committee of that Board or Association; heard by a commissioner appointed by that Board or Association; wherein rulings on law and evidence were entered by that Board; and wherein as final a judgment as possible, disbarment, was visited by that self-same Board of Commissioners upon the defendant, J. Robert Huie!

"Interwined with each and every argument and proposition to be advanced, there is urged there be an active recognition that constitutionally a lawyer is a first class citizen, and that revoking his right to practice law, involving, as it assuredly does, a penalty more severe than a criminal sanction, places the ultimate burden upon this Court of determining whether this proceeding measured up to standards consistent with that innate fairness inherent in the words of both the state and federal constitutions-"Due Process".

A brief consideration of the nature of disbarment proceedings may serve as a useful prologue to the discussion of the broad question presented. From an historical viewpoint, disbarment proceedings stem, probably, from the time of Henry VIII, Henry VIII, 4 Henry 4, C 18. Courts are not dependent upon any legislative action to exercise their right to disbar or discipline an attorney. ***State ex rel McCormick v. Winton***, 11 Ore. 456, expresses it thusly:

"This is an inherent power residing in the court without the aid of statutory enactment. The exercise of the power may be, as it often is, regulated by statute, but the statute does not create it. Its existence is necessary and incidental to the court for its own protection, to secure the proper administration of justice, to maintain the prestige of the profession for integrity, to conserve the common public good, and to protect clients from mal-practice attendant with fraud and corruption."

A careful investigation and close study of disbarment procedures in most of the jurisdictions of the United States reveals that in all, *excluding Alabama*, a supreme court rule or statute affirms in the courts the disbarment function. *E.g.*, Arizona, Arizona Code Annotated, 1939, Sec. 32-201, *et seq.*, and see In re *Greer*, 52 Ariz. 385, 81 P2d 96; Arkansas, Arkansas Code Annotated, Sec. 25-401, *et seq.;* Connecticut, Title 5, Sec. 51-90, Code of Connecticut; Delaware, Rule 32, Supreme Court of Delaware; District of Columbia, Title 11, Sec. 11-2101, *et seq.*, District of Columbia Code; Florida, Integration Rule of the Florida Bar, Article XI, Rules of Discipline, as amended December 13, 1961, and see The *Florida Bar v. Rogers*, 192 So2d 757 (Fla. 1966); Indiana, Rule 3-21, Rules of the Supreme and Appellate Courts, Burns' Indiana Statutes Annotated, Vol. 2, Part I (1966 Supp.), and In re *Hosea*, 201 NE2d 560 (Ind. 1960); Mississippi, Sec. 8711, *et seq.*, Mississippi Code, 1942, recompiled, and see In re *Petition for Disbarment of Lee v. Prisock*, 141 So2d 715 (Miss. 1962); Nebraska, Sec. 7-114, *et seq.*, Revised Statutes of Nebraska, 1943, and see *Nicklaus v. Simmons*, 196 FSupp 691; Rhode Island, Rule 9, Rules of the Supreme Court of Rhode Island, and see In re *Aram K. Berberian*, 213 A 411 (Rhode Island); etc.

Some courts use commissioners, masters or referees to take testimony, but these commissioners, masters or referees are officers *of the court* which is hearing the complaint. *E.g.*, California, Florida, Hawaii, Louisiana, Missouri, etc. Such is not the situation in Alabama.

Florida has a most sophisticated arrangement wherein the Supreme Court of Florida utilizes organizations of the integrated bar in disciplinary proceedings, but in the final analysis, whether defendant appeals or not, the Supreme Court of Florida issues the final order of disbarment. See *The Florida Bar v. Rogers*, 192 So2d 757 (Fla. 1966), and Rule 11.11, Integration Rule of the Florida Bar.

In Alabama, if the defendant does not ask for a review, or if the Supreme Court of Alabama on its own initiative does not call up the record for review, the matter is concluded. Whether actually in practice the Supreme Court of Alabama does call up for review all cases, does not alter the situation, and it is clear

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that a disciplinary proceeding may be concluded at the level of the Board of Commissioners. See Title 46, Section 25, Code of Alabama, 1940, which is as follows, in pertinent part:

> "The supreme court may, and on petition of the aggrieved party must, in any case of suspension or disbarment from practice, review the action of the board, and may, on its own motion, and without the certification of any record, inquire into the merits of the case and take any action agreeable to their judgment."

Thus, Alabama appears to stand alone among the jurisdictions in the United States by entrusting to a body of men *other than a court* the power of disbarment. In this context then, the question which is being presented to this Court takes on a vitality which may not be present when a court is that independent body which sits in ultimate judgment. In the present situation the awesome power of disbarment actually resided in the Board of Commissioners of the Alabama State Bar.

The point will undoubtedly be raised that J. ROBERT HUIE in reality had an independent adjudication by the Supreme Court of Alabama as to Charges Seven, Eight, and Nine, and, therefore, is in no position to now register these objections.

There is a simple answer, and, it is believed, a most cogent one. The approval of such a position would forever close the doors of this Court to the assertion of federal constitutional rights in Bar disciplinary proceedings in Alabama, since to exhaust the remedies afforded by Alabama an attorney must petition the Supreme Court of Alabama for a review of the determination of the Board of Commissioners of the Alabama State Bar.

I.

The question presented for review is an encompassing one, and invites the consideration of the Court to many varied aspects of disciplinary procedures involving attorneys in Alabama. It is assumed, *arguendo*, that not one of these facets considered in and of itself would be sufficient to raise

effectively any Fourteenth Amendment question.

The nature of the right to practice law is ably stated by the Supreme Court of Pennsylvania in In re *Schlesinger*, 404 Pa 584, 172 A2d 835(1963):

> "The right to practice law is constitutionally protected as a property right and no attorney can lawfully be deprived of such right except by due process of law and upon competent and relevant proofs sufficiently credible to support a judgment of disbarment." (p. 840)
>
> Further, the Pennsylvania court said:
>
> "***A disbarment proceeding is every bit as serious as a criminal trial and often more so; the penalty of disbarment is certainly harder than a fine or short imprisonment.***" (p. 848)

The exclusion of attorneys from the right to practice law is the exercise of a judicial power. See In re *Garland*, 71 US 333 (1866).

And it seems axiomatic that anyone who sits in judgment cannot act as a prosecutor since this is inherently unfair and incompatible with the concept of due process of law. See *Ruiz v. Delgado*, 359 F2d 718 (CA 1, 1966).

This Court in In re *Murchison*, 349 US 133 (1955) recognized the fundamental precept here involved when it *held* that where the same judge who presided at a contempt hearing had also served as a one-man grand jury out of which the contempt charges arose there was a denial of that due process guaranteed by the Fourteenth Amendment. Mr. Justice Black, speaking for the Court, wrote:

> "It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very person accused as a result of his investigations.***" (p.137)

In re *Schlesinger*, 404 Pa 584, 172 A2d 835(1963), demonstrates the applicability of this salutary principle of law to a disciplinary proceeding against an attorney. It was held that an attorney was denied due process where the functions of

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prosecutor, judge and jury were combined in a committee of the Court of Common Pleas, which committee lodged and prosecuted, and, through its subcommittee, adjudicated the charges whereon the court, without any hearing of witnesses, entered the disbarment order. The ultimate basis for the conclusion of the reviewing court was that, under these circumstances, there could be no full, fair and impartial hearing of the charges against the accused attorney. The situation there is strikingly parallel to the situation in Alabama where the Alabama State Bar exercises unfettered control of all the minutiae of disciplinary proceedings.

A.

An alleged violation of Rule 25, Section A, as last amended, Appendix B, *infra*, pp. 6-7, must be considered the ultimate justification for the prosecution of this disbarment proceeding.

Rule 25, Section A, as last amended, was the product of a spirited meeting of the Board of Commissioners in July, 1961, wherein, from information available, there was a heated contest between members from the legal establishment representing banks, railroads, and other vested money interests and the members representing what may be termed the populist legal faction of attorneys without a guaranteed income through retainers. The battle had developed over the proviso added by the 1945 Alabama Legislature to Title 34, Section 29, Code of Alabama, 1940, which permitted the granting of a divorce where the defendant was a non-resident if the court had jurisdiction of both parties to the cause. See Appendix B, p. 3 , *infra*.

It appeared to be the consensus that this proviso had allowed Alabama to develop through its courts "a divorce mill".

The validity of the statute prior to the proviso appears doubtful. In March, 1970, the Family Court, Third Circuit, State of Hawaii, ***Whitehead v. Whitehead***, Case D. No. 5505, Judge Nelson Doi presiding, entered its decision declaring unconstitutional a provision of Hawaiian law which prescribed a residence for a continuous period of one year prior to the filing of the divorce complaint. Section 580-1, Hawaii Revised

Statutes. The defendant was a non-resident, and the plaintiff established that she had come to Hilo, Hawaii, with the intent to remain an indefinite time.

Pertinent excerpts from this decision are helpful:

"The question in this case is whether under the United States Constitution the State can deny access to the courts of a resident of less than one year, who believes that she has adequate grounds for divorce, until she acquires a total residence period of one year by waiting, and further residing continuously in the State of Hawaii, when the resident who has resided for over one year is not so denied, and may go to the courts for relief, without further waiting, upon belief that there is sufficient grounds for divorce. The question comes about from the application of the second sentence of Section 580-1, Hawaii Revised Statutes, which reads as follows:

> "No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the state for a continuous period of at least one year next preceding the application therefor."

"Judicial propriety requires that the Court should not be overly concerned with whether Hawaii becomes a 'Divorce Haven' – that should be met with policy and program, and that is for the legislature.

"The Court finds and concludes that the Plaintiff is domiciled in the State of Hawaii and has resided in the Third Circuit for at least three months. Domicile can be established by the concurrence of act and intent, physical presence and intent to remain, and an intent to abandon the old domicile. 'No definite period of time is necessary...one day is sufficient.' *Powell v. Powell*, 40 Haw. 625.

"Access to the Courts is protected by the equal protection clause of the Fourteenth Amendment of the Constitution: See: Chicago v. Northwestern Railway Company v. Nye Schneider Fowler Company, 260 U.S. 35, 67 L.Ed. 115, 43 S.Ct.55; Ex parte Young, 209 U.S.

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123, 53 L.Ed. 714, 724, 28 S.Ct. 441, 13 LRA NS 932;***

"Under the traditional standard, equal protection is denied if the classification is without any reasonable basis--when the classification has no reasonable relation to a legitimate governmental objective.***

"There is no dispute that the effect of the waiting period requirement (Sec. 580-1, H.R.S.) has created two classes of persons--both of them have grounds and do want to apply to the courts for a divorce. One is composed of residents who have resided a year or more, and the other of residents who have resided less than a year, in the jurisdiction.

"What standard do we apply? Even applying the traditional standard, and not the stricter *Shapiro* standard *(Shapiro v. Thompson,* 394 U.S. 618), the waiting period requirement clearly violates the equal protection clause."

J. ROBERT HUIE, then, as a divorce practitioner, submits the only logical, mandatory requirement flowing from the Alabama divorce statutes is to present evidence to the trial court of the domicile of at least one of the parties to the divorce action. Nonetheless, Rule 25, Section A, as amended, casts upon him additional onerous tasks in and about a determination of domicile. This was clearly pointed out in the brief on submission to the Supreme Court of Alabama:

"Manifestly, divorce attorneys have been singled out for special treatment in the matter of knowledge or reasonable cause to know the domicile of the parties involved. For instance, in United States District Courts, jurisdiction may be predicated on diversity of citizenship or domicile. Is not the burden just as great there for an attorney to accurately plead the non-residence of plaintiff or defendant? Yet, if the opposition does not object and the matter is never brought to the attention of the trial court, the case could end just as in a divorce case with a subsisting valid judgment until set aside. The divorce attorney has been separated most assuredly from his fellows. The classification of divorce attorneys in this

regard is unjust, unreasonable, unnecessary and without any substantial basis.

"In essence, the fundamental question is the duty owed by any attorney - bank lawyer, insurance lawyer, railroad lawyer, damage suit lawyer, or what have you - to investigate the allegations he may plead in a complaint or answer. Upon what may any lawyer rely in the presentation of his case to a court? Does a damage suit lawyer who alleges negligence and who then cannot prove negligence on trial perpetrate a fraud on the court because he has relied on his legal opinion defendant was negligent? In the overwhelming majority of cases he has accepted the word of his client as to what occurred.

"This divorce attorney in this case has accepted the word of his client, mostly under oath, he or she was a resident of Alabama. Are divorce attorneys to be a breed apart from other attorneys and their actions subjected to a higher standard than demanded of others? An unqualified "YES" must be the only answer, if Rule 25, Section A, as amended, is allowed to stand as not being in violation of the equal protection clause of Amendment XIV, Constitution of the United States."

J. ROBERT HUIE would state further in this aspect that Rule 25, Section A, as last amended, is causing conduct of an attorney in procuring divorces, *unless he be able to probe the mental processes of his client and ascertain his true intention as to future permanent residence in Alabama,* to be denominated unethical and subjecting himself to disbarment, although the trial court has been satisfied client's statement concerning domicile was sufficient. The error of the trial judge in accepting this evidence as sufficient to establish domicile, if error it be, is being visited upon the attorney. No one must lose sight of the fact that the determination of domicile is a judicial function; all an attorney can do is to present facts to the court. Petitioner submits such a procedure clearly violates his rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution.

B.

It has been noted that several members of the Board of Commissioners that formulated Rule 25, Section A, as last amended, sat to determine the facts allegedly tending to

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demonstrate the guilt of J. ROBERT HUIE. *Arguendo*, the Board must be considered the petit jury. Petitioner was a defendant in a highly judicial, quasi-criminal, trial. See Ex parte, *Dozier*, 262 Ala 197, 77 So2d 903; Ex parte *Messer*, 228 Ala 16, 152 So 244, quoted with approval in Ex parte *Huie*, 278 Ala 330, 178 So2d 156.

The Supreme Court of Alabama has ruled that in a criminal trial, and a disbarment proceeding must be considered the equivalent of a criminal trial, great care should be exercised to preserve to an accused his constitutional rights to a fair trial by an impartial jury, and that in such cases any doubt as to the competence of a juror must be resolved in favor of a defendant. See *Wilson v. Alabama*, 243 Ala 1, 8 So2d 422. It has been held further in Alabama that a person is disqualified to sit as a juror where it is his duty to enforce the laws of a city, the violation of such a law being the subject matter of the prosecution. *Shapiro v. City of Birmingham*, 30 Ala App 1, 10 So2d 38.

The conclusion is imperative that petitioner was denied that fair and impartial tribunal for the determination of his guilt or innocence guaranteed by the Sixth Amendment, United States Constitution, as the same is made applicable to Alabama by operation of the Fourteenth Amendment, United States Consitution.

C.

The Board of Commissioners of the Alabama State Bar employed the Honorable William H. Morrow, Jr., as general counsel, and, as the record shows, he prosecuted this case against petitioner. This was in direct violation of Title 46, Section 25, Code of Alabama, 1940, as amended, which provides: "***The state solicitor (now district attorney) of the circuit in which such accused attorney resides shall prosecute any such charge or case, interrogate the witnesses, introduce the evidence in support of such charges, and when requested by any member of the board, argue the cause before the board.***"

The Board of Commissioners saw fit in its misguided zeal to retain the prosecution in its own hands and under its own direction. Mr. Morrow cannot be faulted in this regard; the

Board of Commissioners must be deemed to be the culprit. This is but another piece in the mosaic of unfettered control in the Board of these disbarment proceedings.

Petitioner hesitates to use the venacular in a petition in this Court, but, at this point, things began to reek of a higher odor than those in Denmark of Shakespeare's "Hamlet"! They "stink".

Petitioner insists that this, once again, shows a violation of the doctrine of In re *Schlesinger, supra*, which doctrine, it is urged, should be considered and accepted by this Court on federal constitutional grounds.

D.

Every shred of evidence against petitioner was brought before the Board of Commissioners on the 3rd of March, 1967, by means of deposition, or other proceedings held outside the presence of the several commissioners. The Supreme Court of Alabama upheld this non-confrontation, which was denounced in In re *Schlesinger, supra*.

It is evident that the characterization of disbarment proceedings as quasi-criminal or *sui generis* is but an attempt by the Alabama court to circumvent the applicability of federal constitutitional standards. Compare *Bloom v. Illinois*, 391 U.S. 194.

Thus, it is the position of petitioner that he was not confronted with the witnesses against him in the tribunal which adjudicated his guilt. See *Pointer v. Texas*, 380 US 400.

To cast upon defendant, as in this case, the burden of traveling from Alabama to New Jersey, and employing counsel to represent him, to enjoy his federal constitutional right of Sixth Amendment confrontation is patently a denial of the right by indirection.

Casting aside the labeling of disbarment proceedings as being quasi-criminal, the crux of the matter is that disbarment is a severe punishment, as so denominated, and correctly, in In re *Schlesinger, supra*. Where the punishment is of great magnitude, then federal constitutional standards of right should be applied. Compare *Duncan v. Louisiana*, 391 US 145. See *Willmer v. Committee on Character and Fitness*, 373 US 96 (1963).

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E.

Petitioner challenged the validity of Rule 36, Section A, for vagueness and argued this in brief to the Supreme Court of Alabama. As was stated by this Court in *Connally v. General Construction Co.*, 269 US 385, 391, it is a rule "which forbids*** the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." Contrast *Zwickler v. Koota*, 389 US 241.

"Conduct unbecoming an attorney" does not have any definite standards. Its interpretation is solely subjective, and, when placed in the hands of *a non-court connected body* it must, and should, be denounced!

Clearly, there is not compliance with federal standards of definiteness.

F.

J. ROBERT HUIE interposed the objection that the disbarment proceedings were void because a trial by jury was not provided for in the statutes concerning disciplinary proceedings.

It is worth noting that dentists and doctors, among the professions, have the right to trial by jury in Alabama. See Title 46, Section 94, Code of Alabama, 1940, and Title 46, Section 284, Code of Alabama, 1940. This is on its face an invidious discrimination.

The Supreme Court of Alabama rejected the right to trial by jury in *In the Matter of John Ike Griffith*, 219 So2d 357 (Ala 1969), by relying on the theory that courts have an inherent power of disbarment. The Supreme Court of Alabama missed the point, because, as has been spelled out, *a court did NOT enter an order of disbarment.* The Board of Commissioners of the Alabama State Bar is NOT a court.

G.

Petitioner is concerned further with the standard of proof adopted by the Supreme Court of Alabama in this basically criminal proceeding. The court stated:

"From the evidence summarized above, we are reasonably satisfied that George E. Anderson was a resident of New Jersey and was not a resident of Alabama in December, 1964, or January, 1965,***" (Emphasis supplied) (Appendix A, *infra*, p. //).

The serious charges of this case demand a higher standard of proof, *i.e.*, there should be invoked the criminal standard of satisfaction beyond a reasonable doubt. And, it is pointed out, the Supreme Court of Alabama did not apply the civil standard of proof with the preponderance of the evidence. See Frankfurter and Black, dissenting, *Leland v. Oregon*, 343 US 790 (1952).

H

While no further point is here made on the merits, the case of *Sullivan v. Alabama State Bar, et al.*, 394 US 812, shows the innate unfairness of the composition of the Board of Commissioners of the Alabama State Bar, *a non-judicial body*.

Considered with the other aspects of this case, and the point was raised below by petitioner, the ill-apportionment of the Board works a discrimination against him. This factor must be here considered.

I.

The rules of the Board of Commissioners of the Alabama State Bar concerning evidence grant *to a non-judicial body* the right to determine, in its opinion, whether or not evidence is relevant, material or competent. See Appendix B, *infra*, p. 7

How this comports with due process escapes petitioner! His many objections were summarily overruled; and the Board of Commissioners did have before it all the evidence and it must be granted that this was an influence on the Board, notwithstanding any disavowals such evidence was not being considered.

J.

This Court should consider that, over objection, a member of the Alabama State Bar was the commissioner in this cause to take evidence in the *Anderson* divorce.

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This illustrates once again the overwhelming position of the Alabama State Bar in acting as prosecutor, investigator, judge and jury. There is absolutely nothing involved in this disbarment proceeding which was not under the complete control of the Alabama State Bar, *a non-judicial body.*

K.

Finally, the affirmance of disbarment for ONE divorce case is so obviously an ignoring of federal due process as to require no lengthly discussion.

It is a well-known fact that the Alabama State Bar in the time period of the inception of this proceeding did not bring charges under Rule 25, Section A, as Amended, against any attorney who had obtained less than what the Bar considered a maximum figure, *i.e.*, 50. Yet, here, an attorney is being disbarred for ONE divorce, and it is doubtful whether or not the lower court in Alabama acted correctly or judicially.

The morality of the situation not being in question, the legality of it is suspect.

CONCLUSION

Leonard Levy in his 1968 book, *Origins of the Fifth Amendment,* delineates in minute detail the machinations of the High Commission in England during the later part of the Sixteenth Century.

It is quite striking how many details the procedures utilized by the High Commission in ferreting out and convicting heretics are reflected in the procedures used in this case by the Board of Commissioners of the Alabama State Bar, *a non-judicial body,* to assure the disbarment of an Alabama attorney.

Because of the totality of the procedures, petitioner submits his petition for certiorari should be granted in order that the case be briefed fully on the merits of the question presented.

This question is of utmost importance to lawyers in

Alabama, and, also, to lawyers in each of the jurisdictions in the United States.

Reflecting the views of the Honorable Tom Clark, each member of the various bars should be alert to maintenance of a completely ethical bar association. However, without the guidance of this Court, particularly as to procedures, the pursuance of miscreants at the bar shall only foment extensive and delaying litigation.

Respectfully submitted,

FRED BLANTON, JR., Esq.
Suite 1627
Twenty-One Twenty-One Building
Birmingham, Alabama 35203

Counsel for Petitioner

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1969-70

In the Matter of J. Robert Huie
(J. Robert Huie

3 Div. 276

v.

Board of Commissioners of the
Alabama State Bar

Appeal from Board of Commissioners
of the Alabama State Bar)

PER CURIAM.

We review a proceeding before the Board of Commissioners of the Alabama State Bar, herein referred to as the Board, wherein J. Robert Huie was found guilty of certain charges and disbarred from the practice of law. He is sometimes herein referred to as petitioner.

In substance, the charges are to effect that Huie, either in person or in association with other attorneys, did represent certain parties in divorce cases in Alabama; that in said cases neither party to the suit was a resident of Alabama; that Huie had knowledge or reasonable cause to believe that neither party to the suit was a bona fide resident of Alabama at the time of filing the bill of complaint therein; and that, with such knowledge or reasonable cause for belief that neither party was a resident of Alabama, Huie, either in person or in association with another attorney, did submit to certain courts of this state certain cases wherein the pleadings and testimony falsely represented that complainant was a resident of Alabama.

The charges fall into four groups. Charges 1 through 4 relate to 76 cases in Geneva County; Charges 5 and 6 to 13 cases in Marion County; Charges 7, 8, and 9 to a case in Jefferson County; and Charges 10, 11, and 12 to a case in Winston County.

Certain charges in each group allege violation of amended Rule 25, of Section A, of Rules Governing The Conduct of Attorneys, approved October 23, 1961. This rule will be referred to as Rule 25. It is set out in 272 Ala. at pages XXI and XXII and is copied at length in: *In re Sullivan,* 283 Ala. 514, 518, 519, 219 So. 2d 346; *In re Griffith,* 283 Ala. 527, 531, 219 So. 2d 357; and *Smith v. Board of Commissioners of Alabama State Bar,* *Ala.* , 225 So. 2d 829, 830, 831.

Certain charges in each group allege violation of Rule 36 of Section A of said rules which recites:

> "36. No person licensed to practice law in the courts of the State of Alabama shall be guilty of any conduct unbecoming an attorney at law." (239 Ala. XXV)

Charges 8 and 11 allege violations of Rule 16 of Section A of said rules which recites:

> "No person heretofore or hereafter admitted to practice law in Alabama, shall
>
> ". . . . . .
>
> "16. Introduce or offer to introduce any testimony which he knows to be false or forged." (239 Ala. XXIV)

Counsel for Huie ably and vigorously represented him and filed numerous motions and objections which were overruled by the Board. The issues formally raised by these pleadings and the action of the Board in overruling Huie's motions and objections are the subject of the assignments of error first argued by counsel for Huie and will be first considered in this opinion.

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Assignment II.

Petitioner filed a pleading entitled Objection to Jurisdiction of Board of Commissioners of the Alabama State Bar, and the Board overruled the objection. Petitioner assigns this action of the Board as error and argues that his objection should have been sustained on Grounds A, B, and C.

In Grounds A and B, petitioner asserts that the Board of Commissioners is unconstitutionally established and without jurisdiction to try petitioner and was also without jurisdiction to promulgate Rule 25; all for the reason that the Board is composed of members who are elected, one member from each judicial circuit in the state, and because the number of lawyers and the number of people in some circuits are much greater than the numbers of lawyers and people in other circuits.

Ground C is that the Board is unconstitutionally established in violation of Sections 42 and 43 of the Constitution of 1901 which require separation of the powers of government among three separate magistracies.

These are the same issues which were raised by Assignment II in *In re Sullivan*, supra, 283 Ala. at 521, 522, and there decided adversely to petitioner's contentions. For the reasons stated in *Sullivan*, Assignment II in the instant case is not sustained.

Assignment III.

In this assignment, petitioner asserts that the Board erred in overruling his objection to certain members of the Board sitting in the instant case. Petitioner says those certain members objected to were not qualified to sit in the instant case because they were members of the Board when Rule 25, as amended, was adopted by the Board in 1961.

This is the same assignment which was presented as Assignment III in *Sullivan* and, for the reasons there stated, is not sustained.

Assignments V and VI.

In these assignments, petitioner asserts that the Board erred in overruling his motions to suppress certain depositions which were taken and introduced into evidence in the instant case.

In Ground 1 of the motions to suppress, petitioner asserts that the depositions are due to be suppressed because, if the depositions were taken under authority of Title 7, § 457, Code 1940, the depositions were not admissible for that no affidavit was made as required by Title 7, § 458.

In Ground 2 of the motions, petitioner asserts that the depositions are not admissible under authority of Act No. 375, Acts of 1955, Vol. II, page 901; which appears in 1958 Recompiled Code, Title 7, § 474(1), et seq; because Act. No. 375 does not apply to disbarment proceedings.

These same contentions were made and decided adversely to petitioner in *Sullivan* under Assignment V, and, for the reasons there stated, Assignments V and VI in the instant case are not sustained.

Assignment VII.

Petitioner asserts that the Board erred in overruling his objection to Timothy M. Conway's appointment as commissioner to take depositions on the ground that Conway was a licensed member of the Alabama State Bar.

The action of the Board was not error. See Assignment VII in *Sullivan*.

Assignment X.

Petitioner says that, by improper argument made before the Board by Mr. Mims as counsel for the Grievance Committee, petitioner ". . . . has been prejudiced to the point where this Court cannot consider in any respect the judgment of disbarment entered by the Board of Commissioners . . . . in its review of this record."

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This court has read in consultation the argument made by Mr. Mims, as set out on pages 540 through 543 of the record, and are of opinion that the argument there appearing does not require reversal of the judgment of disbarment.

Assignment VIII.

Petitioner assigns as error that the Board erred in overruling his motion to dismiss the complaint as amended, which motion contains 52 grounds.

(1) In Grounds 8 and 35 of the motion to dismiss the complaint, petitioner asserts that Rule 25 is in conflict with interpreted statutory law, to wit: §§ 27 and 29, Title 34, Code 1940, as amended; and, therefore, that Rule 25 is void and violates the constitutional guaranty of due process. In *Sullivan*, under Assignment IX, this contention was held to be without merit and we follow that holding here.

(2) In Grounds 41 through 46, petitioner asserts that Rule 25 violates his rights to equal protection and due process under the state and federal constitutions. In considering Assignment IX, in *Sullivan*, this court held this contention to be without merit, and we follow that holding here.

(3) In Grounds 47 through 49, petitioner asserts that the Grievance Committee was illegally appointed by the President of the State Bar. This contention is without merit under authority of *Sullivan*, in which see Assignment IX.

(4) In Grounds 50 through 52, petitioner asserts that the officers of the State Bar are without power to act in this proceeding inasmuch as they were illegally and unconstitutionallyelected. This contention is without merit under authority of *Sullivan*, in which see discussion in Section 4 under Assignment IX, paragraph [16].

(5) In Grounds 10, 11, 37, and 38, petitioner again contends that composition of the Board is illegal because of disparity in the number of lawyers in judicial circuits. This contention has already been held to be without merit in consideration of Assignment II, supra.

(6) In argument in support of Ground 5 of the motion to quash the complaint, petitioner says, with reference to charges laid under Rule 36:

> "In fact, it appeared to be the position of the Grievance Committee that this charge pertained to refusal to testify on the part of the defendant. . . ."

The record shows that the petitioner did refuse to testify when he was called as a witness by the Grievance Committee, but the charges laid under Rule 36 do not specify his refusal to testify as a violation of Rule 36 or any other rule. We do not understand that his refusal to testify is in anywise made the basis of any complaint against petitioner in this record. Ground 5 is not well taken.

Assignment I.

This assignment does not arise out of any pleading filed on behalf of petitioner. Petitioner simply argues that the judgment of disbarment ought to be set aside because the legal evidence is not sufficient to support a finding that he is guilty of any charge made against him in the instant proceeding. We will consider whether the legal evidence is sufficient to support a finding that petitioner is guilty of the things he is charged with having done as set out in Charges 7, 8, and 9.

We review the evidence de novo without any presumption in favor of the findings of the Board because the testimony was taken by deposition and not ore tenus before the trier of fact. This rule of review has been stated by this court in numerous cases, and, in *Ex parte Acton*, 283 Ala. 121, 214 So. 2d 685, this court held that the rule applies to review of disbarment proceedings. See the authorities cited in P [1]in *Acton* and also: *Martin v. Culpepper*, 253 Ala. 412, 44 So. 2d 568; *Shubert v. Lacy*, 257 Ala. 629, 60 So. 2d 442; and *Kennedy v. State Department of Pensions and Security*, 277 Ala. 5, 166 So. 2d 736.

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Charge 7 recites:

"CHARGE SEVEN

"(Violation of Rule 25, Section A)

"On, to-wit, January 27, 1965, the said attorney did submit to the Circuit Court, Tenth Judicial Circuit of Alabama, a divorce case, namely, George E. Anderson vs. Loretta A. Anderson, in Equity, Case No. 137-515, wherein the Bill of Complaint and deposition of complainant represented to the Court that the complainant was a bona fide resident of the State of Alabama, when, in truth and in fact, the said attorney knew, or had reasonable cause to believe, that neither the complainant nor the respondent was a bona fide resident of the State of Alabama.

"The Grievance Committee charge that in doing the above described acts, the said attorney was guilty of violating or failing to comply with Rule 25 of Section A of the Rules Governing the Conduct of All Persons Admitted to the Practice of Law in the State of Alabama, the same having been heretofore attached to the pleadings in this cause."

In Charge 8, the Grievance Committee charges that petitioner violated Rule 16 which is quoted above. The facts alleged in Charge 8 are the same facts alleged in Charge 7 relating to the Anderson case.

A copy of the file, or the original, in Case No. 137-515 is in the record. The bill of complaint is signed by petitioner as solicitor for complainant. He alleges:

"1. Complainant is over the age of twenty-one years and is a bona fide resident citizen of Jefferson County, Alabama. That the respondent is likewise over the age of twenty-one years and she is a resident of this county and state."

In the same file, the deposition of complainant recites:

"My name is George E. Anderson. I am the above named Complainant in this divorce suit in which my wife is the Respondent. Her name is Loretta A. Anderson. I am thirty-four years old, and I am a bona fide resident citizen of the State of Alabama and Jefferson County. I have been such for the time required by law. I am now employed by the A. & P. Tea Company. My wife is thirty-three years old, and she is not residing in this County and State at this time."

In Charge 9, the Grievance Committee alleges the same facts as in Charge 7 and charges that the same constitute a violation of Rule 36, supra; i. e., that petitioner is guilty of conduct unbecoming an attorney.

It is clear and, we think, undisputed that petitioner did represent complainant in the Anderson case. The bill of complaint is marked as filed by the register on "JAN 27, 1965." A final decree granting a divorce is dated the same day.

Under date of February 17, 1965, the same judge who signed the divorce decree of January 27, 1965, signed a decree setting aside the decree of January 27, 1965.

The respondent, Loretta A. Anderson, testified before a commissioner in New Jersey. Counsel for petitioner were present at her examination and counsel for petitioner cross-examined her. She testified that her residence address is: 34 Spruce Street, Carteret, New Jersey; that she has resided there thirteen years; and that she has been a resident of New Jersey all her life. It appears to be clear and, it seems, undisputed that she is not and never has been a resident of Alabama.

She testified further that she and George E. Anderson are married; that they separated in 1961; that he lived in Sewaren for a while and then moved to Perth Amboy; that he filed suit for divorce in 1961, approximately, and the suit was thrown out of court; that on or about December 24, 1964, he came to the house where she lived; that she signed a paper; that the answer in the file in Case No. 137-515 is not the paper she signed but the signature on the answer is her signature; that the next day she went to the office of an attorney, Edward J.

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Dolan, in Carteret; that she called her husband on the telephone and talked to him; that after the telephone conversation with her husband on December 25, she saw him at a department store in Woodbridge, New Jersey, between December 25 and January 15; that after January 27, she got the final decree from Alabama; she took it to Dolan's office; a couple of days later her husband called her; that her husband is with the A & P Company in Rahway; that after the divorce decree was called off, he called practically every day for two weeks, and she had her phone number changed; that in December, 1964, and January and February, 1965, he was making weekly payments for child support and she got a check every week from the court in New Jersey.

Edward J. Dolan testified before the commissioner in New Jersey also. Dolan testified that Loretta A. Anderson came to his office around December 24, 1964; she told him she had signed a paper for the husband; that he placed a call to petitioner's office in Birmingham; that someone else answered; that Dolan asked to have petitioner return his call; that Dolan got a return call from a man who said he was petitioner; that Dolan told petitioner that both the Andersons were nonresidents of Alabama; that petitioner said the case would not proceed further; that Dolan wrote and sent to petitioner a letter dated December 24, 1964, which is in evidence and recites in part as follows:

"RE: George Andersen
vs: Loretta Andersen

"Dear Mr. Huie:

"This is to advise that this office represents Loretta Andersen of Carteret, New Jersey whose husband is represented by your office for the purposes of obtaining a divorce in the State of Alabama.

"George Andersen is a bona fide resident of the State of New Jersey. He attempted to obtain a divorce from his wife in this State and said divorce was denied, within the past 3 months by the Courts of the State of New Jersey.
"
"If her husband proceeds against her in the State of

Alabama, she intends to contest said divorce and also the jurisdiction of the Court to hear and to enter judgment of divorce, as neither she nor her husband are bona fide residents of Alabama."

Sometime later, Dolan received, he thinks, from Mrs. Anderson, a copy of the divorce decree of January 27, 1965. He wrote to the trial judge and others.

There is in evidence a copy of a letter from petitioner to Dolan dated February 10, 1965, which contains the following statements:

"Re: Mrs. Loretta Anderson

"Dear Mr. Dolan:

"I received today the copy of your letter to the Clerk of the Circuit Court concerning the above-styled case.

"I owe you an apology and will do whatever is reasonable to correct a mistake inadvertently made by this office. I had two Anderson files for some unknown reason, and your letter to me of December 24th, and the reply thereto, were misplaced in the wrong file. Consequently, in the rush of business, when Mr. Anderson appeared in my office with the signed Answer and Waiver, representing same to me to be his wife's signature, this office processed the case.

"Today I have discovered your letter of December 24th, and if Mrs. Anderson wishes to contest the divorce I will certainly do nothing to stand in the way of this contest. However, since my file indicates that the parties have been separated for a long period of time, could it be that Mrs. Anderson may wish to reconsider the matter, that this could be the best solution to her marital difficulties?

" . . . . . .

"If you wish to discuss this further with your client and let me know what action if any you may wish to take. I would appreciate it if you would correspond directly with me rather than the court."

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In December, 1964, Dolan called George E. Anderson at the A & P store in Rahway and talked with him.

From the evidence summarized above, we are reasonably satisfied that George E. Anderson was a resident of New Jersey and was not a resident of Alabama in December, 1964, or January, 1965, when Case No. 137-515 was filed by petitioner, and further that petitioner had knowledge that Anderson was not such a resident at that time. Petitioner's letter of February 10, 1965, to Dolan acknowledges that petitioner had received Dolan's letter of December 24, 1964, which plainly states that George Anderson is a resident of New Jersey. We are not persuaded that the statement with reference to two Anderson files contained in petitioner's letter of February 10, 1965, is sufficient to exonerate him.

The finding stated above is sufficient to support the judgment of guilt on Charges 7, 8, and 9, and the punishment of disbarment.

This record contains 546 pages. No useful purpose would be served by extending this opinion to include consideration of the evidence which was introduced in support of the other nine charges and we pretermit discussion of them. The evidence supporting Charges 7, 8, and 9 sustains the judgment of disbarment and we deem it proper to rest affirmance on those charges alone.

AFFIRMED.

All the justices concur except Lawson, J., not sitting.

THE SUPREME COURT OF ALABAMA

THURSDAY, JANUARY 8, 1970

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: CHIEF JUSTICE LIVINGSTON AND ASSOCIATE JUSTICES SIMPSON, MERRILL, COLEMAN, HARWOOD, BLOODWORTH, MADDOX AND McCALL.
ASSOCIATE JUSTICE LAWSON, NOT SITTING.

3rd Div. 276

In the Matter of J. Robert Huie

(J. Robert Huie v. Board of Commissioners of the Alabama State Bar)

Come the parties by attorneys and the Petition for Review and the record and matters therein assigned for errors being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Board of Commissioners of the Alabama State Bar there is no error.

IT IS CONSIDERED, ORDERED AND ADJUDGED that the resolution, order and judgment of the Board of Commissioners of the Alabama State Bar finding J. Robert Huie guilty of Charges 7, 8 and 9 preferred against him be, and the same is hereby affirmed.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the resolution, order and judgment of the Board of Commissioners of the Alabama State Bar disbarring J. Robert Huie from the practice of law be, and the same is hereby, affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the costs incident to these proceedings be, and the same are hereby taxed against the petitioner, J. Robert Huie, for which costs let execution issue.

Per Curiam Opinion

All the Justices concur except Lawson, J., not sitting.

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SUPREME COURT OF ALABAMA

THURSDAY, FEBRUARY 5, 1970

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: CHIEF JUSTICE LIVINGSTON AND ASSOCIATE JUSTICES LAWSON, SIMPSON, MERRILL, COLEMAN, HARWOOD, BLOODWORTH, MADDOX AND McCALL.

3rd Div. 276

IN THE MATTER OF:

J. ROBERT HUIE

PETITION FOR REVIEW

IT IS ORDERED that the application for rehearing filed on January 20, 1970 be and the same is hereby overruled.

APPENDIX B

B1

Constitution, Statutes and Rules Involved

I

Constitution of the United States, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

II

Constitution of the United States, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trail, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

III

Constitution of the United States, Amendment XIV, Section 1.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV

Title 28, Section 1257(3), United States Code.

Final Judgments or Decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

V

Title 14, Section 377, Code of Alabama, 1940

Perjury and subornation in other cases.

Any person who wilfully and corruptly swears or affirms falsely, or corruptly procures another to so swear or affirm, in regard to any material matter or thing, upon any oath or affirmation authorized by law, except on the trial of any person under an indictment for a felony, shall, on conviction, be imprisoned in the penitentiary for not less than two or more than five years.

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VI

Title 34, Section 27, Code of Alabama, 1940

For abandonment, twelve months' residence to be proved.

No bill can be filed for a divorce on the ground of voluntary abandonment, unless the party applying therefor, whether husband or wife, has been a bona fide resident citizen of this state for twelve months next preceding the filing of the bill which must be alleged in the bill and proved; provided however, the provisions of this section shall not be of force and effect when the court has jurisdiction of both parties to the cause of action.

VII

Title 34, Section 29, Code of Alabama, 1940

If defendant a nonresident, a year's residence by plaintiff must be proved.

When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for one year next before the filing of the bill,which must be alleged in the bill and proved; provided however, the provisions of this section shall not be of force and effect when the court has jurisdiction of both parties to the cause of action.

VIII

Title 46, Section 43, Code of Alabama, 1940

Duties of attorneys. It is the duty of attorneys:

1. To support the constitution and laws of this state, and of the United States.
2. To maintain the respect due to courts of justice and judicial officers.

3. To employ for the purpose of maintaining the causes confided to them such means only as are consistent with truth, and never seek to mislead the judges by any artifice, or false statement of the law.

4. To maintain inviolate the confidence and at every peril to themselves to preserve the secrets of their clients.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party, or a witness, unless required by the justice of the cause with which they are charged.

6. To encourage neither the commencement nor continuance of any action or proceeding from any motive of passion or interest.

7. Never to reject for any consideration personal to themselves the cause of the defenseless or oppressed.

IX

Title 46, Section 25, Code of Alabama, 1940

The board of commissioners shall have power: (a) To determine, by rules, the qualifications and requirements for admission to the practice of law: (b) to conduct through a board of examiners, hereinafter provided for, the examination of applicants; and such board of examiners shall certify to the supreme court the names of the applicants found to be qualified; such certifications shall entitle such persons to be enrolled in the bar of the state and to practice law, provided the fees hereafter required are paid; (c) subject to the approval of the supreme court, to formulate rules governing the conduct of all persons admitted to practice, and to investigate, or cause to be investigated, and to pass upon, all complaints that may be made concerning the professional conduct of any person who has been, or may hereafter be, admitted to the practice of the law; (d) subject to the approval of the supreme court, to formulate rules governing the re-instatement of members of the bar who have been disbarred, and to pass upon all petitions for reinstatement; (e) to appoint one or more committees from the membership of the board, or from the

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membership of the entire bar, or partly from one and partly from the other, to take evidence in connection with any complaint filed against any attorney and forward the same to the board. In all cases, testimony with reference to such charges shall be taken at the courthouse of the county of the residence of the party charged, provided the evidence of witnesses residing outside of such county may be taken in the same manner as provided by law for the taking of depositions in civil cases. The state solicitor of the circuit in which such accused attorney resides shall prosecute any such charge or case, interrogate the witnesses, introduce the evidence in support of such charges, and, when requested by any member of the board, argue the cause before the board. The board shall administer such discipline, by public or private reprimand, suspension from the practice of law, or exclusion and disbarment therefrom, as the case shall, in their judgment warrant. A majority of the board shall constitute a quorum and the majority of those present (if a quorum be present) shall be empowered to act as and for the entire board. The supreme court may, and on petition of the party aggrieved must, in any case of suspension or disbarment from practice, review the action of the board, and may, on its own motion and without the certification of any record, inquire into the merits of the case and take any action agreeable to their judgment. Rules regulating the manner of such review and providing for the certification of the evidence, or if the supreme court desire, the taking of additional evidence, shall be promulgated by said board and become effective upon approval by the supreme court. (f) To make such rules and by-laws not in conflict with any of the terms of this chapter concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the board and of the state bar. (g) To hold and conduct educational and social meetings and activities among the members of the bar, to publish journals and generally to do such things as in their judgment may tend to improve the educational and ethical standing of bench and bar. (h) Should any vacancies occur on said board, to fill such vacancies by appointment of a member of the state bar from the judicial circuit in which said vacancy exists and such appointee shall hold for the time of the unexpired term or pending the election of his successor. (i) To establish circuit or branch associations

of the state bar and if circuit associations are established, the member of the board from said circuit shall be ex officio the president of such circuit association. Said circuit or branch association shall have no authority to suspend or disbar attorneys and in all matters shall be subordinate to the authority of the board. If any member of said board is a party to the preferment of charges for disbarment or suspension of any lawyer, or there exists as against any member of such board any cause provided by law for the disqualifications of judges or jurors in civil or criminal cases, such member shall be disqualified from sitting as a member of said board in the hearing of such charges. Said board shall have no authority, nor shall it in any way undertake, to regulate the fees or charges of lawyers for the rendition of their professional services.

X

RULE 25, SECTION A, as last amended.

Board of Commissioners of Alabama State Bar

25. No person heretofore or hereafter admitted to practice law in Alabama shall

(a) knowingly or willfully make any false representations of fact to any judge, court, or jury to induce a favorable action or ruling by either;

(b) File or prosecute or aid in the filing or prosecution of any suit, cross bill, or proceeding seeking a divorce in a Court in Alabama as attorney or solicitor for a complainant or cross complainant therein or serve as referring or forwarding attorney for such complainant or cross complainant with knowledge or reasonable cause to believe that neither party to such suit, cross bill, or proceeding is at the time of the filing of the bill of complaint or cross bill of complaint therein, a bona fide resident of the State of Alabama;

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(c) While acting as attorney for either party in any suit for divorce in any Court in Alabama represent to the Court or conspire with any party, attorney, or person to represent to the Court that either party to such suit is a bona fide resident of Alabama, knowing such representation to be false.

XI

RULE 36, SECTION A, as last amended.

Board of Commissioners of Alabama State Bar

36. No person licensed to practice law in the courts of the State of Alabama shall be guilty of any conduct unbecoming an attorney at law.

XII

RULE 16, SECTION A.

Board of Commissioners of Alabama State Bar

No person heretofore or hereafter admitted to practice law in Alabama shall...

16. Introduce or offer to introduce any testimony he knows to be false or forged.

XIII

RULE 18, SECTION B.

Board of Commissioners of Alabama State Bar

In the taking of testimony by the Grievance Committee of the Board or by a Commissioner, as herein provided, or by the Board, it shall not be required or necessary that objection be made to any evidence which may be offered by either party, but the Board shall consider only such evidence as is, in its opinion, relevant, material, or competent and it shall not consider any testimony which, in its opinion, is irrelevant, immaterial, or incompetent.